

**MINUTES OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**
Tuesday, July 7, 2015 – 9:00 a.m. – Room 445 State Capitol

Members Present:

Sen. Howard A. Stephenson, Senate Chair
Rep. Curtis Oda, House Chair
Sen. J. Stuart Adams
Sen. Gene Davis
Sen. Mark B. Madsen
Rep. Carol Spackman Moss
Rep. R. Curt Webb
Rep. Mark A. Wheatley

Members Absent:

Sen. Jim Dabakis
Rep. LaVar Christensen

Staff Present:

Mr. Arthur L. Hunsaker, Policy Analyst
Ms. Christine R. Gilbert, Associate General Counsel
Ms. Tracey Fredman, Legislative Assistant

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Stephenson called the meeting to order at 9:17 a.m. Sen. Dabakis was excused.

MOTION: Sen. Davis moved to approve the minutes of the June 8, 2015, meeting. The motion passed unanimously.

2. Need for Rules to Implement Utah Code Subsection 23-19-14.5(4)

Mr. Mike Fowlks, Deputy Director, Division of Wildlife Resources, indicated that the lack of rulemaking required by Utah Code § 23-19-14.5(4) was an oversight due to a change in personnel at the time the statute was enacted. He explained that the process required in statute was developed and put into place without the Wildlife Board adopting a rule.

Ms. Staci Coons, Wildlife Board Coordinator and Rules Coordinator, Division of Wildlife Resources, stated that the rule has been drafted and is expected to be in process and filed with the Division of Administrative Rules in August.

Mr. Ken Hansen, Director, Division of Administrative Rules, explained the process by which the division assists state agencies with the rulemaking requirements within the time frame established by 2007 General Session H.B. 327, "State Agency Timely Adoption of Administrative Rules." He noted that, following the General Session, the work of putting together a prepared list of passed bills requiring rules is completed by legislative staff.

Mr. Hunsaker briefed the committee on how the list of passed bills requiring rules is compiled.

Chair Stephenson invited discussion about whether to repeal the statutory requirement that an agency must appear before the committee if it does not comply with the 180-day requirement to promulgate rules, and instead require that the agency communicate with the committee in writing that the agency is willing to comply with the rulemaking requirement under a revised time frame.

No action was taken on this item.

Chair Stephenson invited Mr. Hansen to announce that he has accepted an appointment as Deputy Director of the Department of Administrative Services and will begin serving in that capacity on July 27, 2016.

3. Pool issue

Mr. Stan Lockhart, President, Utah National Parks Council, discussed the cost-effectiveness of above ground swimming pools but explained that above ground swimming pools are not allowed for commercial uses in Utah.

Mr. Dave Merrill, Properties Manager, Utah National Parks Council, briefed committee members on the requirements of "R392-302. Design, Construction, and Operation of Public Pools" that prohibit above ground swimming pools in Boy Scout camps in Utah, which include standards of water quality and safety, the shape of the walls of the pool, and a deck area surrounding a pool.

Ms. Jennifer Brown, Director, Division of Disease Control and Prevention, and Mr. Ron Marsden, Program Manager, Environmental Sanitation Program, Department of Health, distributed "UDOH Response to Senator Stephenson's Request." Mr. Marsden stated that if the Utah National Parks Council is able to meet the requirements of R392-302 the council would be able to operate an above ground swimming pool.

Committee discussion followed.

MOTION: Sen. Davis moved that the committee request that the Department of Health reexamine and, where needed, rewrite its administrative rules to provide a process for above ground pool applications to be submitted for review and potential approval. The motion passed unanimously.

4. Law Enforcement Regulations Related to Body Cameras

Colonel Daniel Fuhr, Superintendent, Highway Patrol, Utah Department of Public Safety, referred committee members to "Policy 620, Use of Portable Digital Video Recorders, Utah Department of Public Safety Policy Manual," which was distributed in the mailing packet. Col. Fuhr described current body camera policy and procedures, and responded to questions related to accountability of both officers and the public.

Chair Stephenson questioned the use of "should" rather than "shall" in the department policy.

Mr. Ken Wallentine, retired Utah law enforcement officer, and National Senior Legal Advisor, Lexipol, LLC, briefed the committee on the policy direction Lexipol provides to police agencies across the United States. Mr. Wallentine discussed the use of "should" in policy as a means of ensuring an agency is following best practices but is not creating an inflexible standard that could be cited in a court case.

Committee discussion continued about whether policies on the use of body cameras should be placed in rule to apply to all law enforcement agencies throughout the state. Col. Fuhr indicated that in the case of body cameras or dashboard cameras, it is probable that agencies would already have a policy in place specifically tailored to their agency and needs.

Ms. Gilbert noted that the policy being discussed may fall under an internal management exemption in the Utah Administrative Rulemaking Act, but there is no case law in Utah on the internal management exemption. Ms. Gilbert therefore reported on a few examples from other states to illustrate how those states read similar exemptions.

Mr. Wallentine, speaking on behalf of the Utah Chiefs of Police Association, presented a video entitled "Body Worn Camera Limitations" and discussed the usefulness of videos for training purposes, as well as the limitations. He stressed the legislative need to address issues, including:

- privacy,
- video quality,
- length of storage,
- costs associated with archiving video, and
- costs of responding to Government Records Access and Management Act (GRAMA) requests.

Mr. Tom Ross, President, Utah Chiefs of Police Association, expressed support for legislative leadership and participation in the discussion of the use of body worn cameras.

Mr. Doug Diamond, Chief of Police, City of West Jordan, commented on the value of body worn cameras but stated that a body worn camera provides only a limited perspective. He also spoke about privacy issues and stated that videos must be kept private and exempt from GRAMA laws.

Mr. Todd Richardson, Sheriff, Davis County, spoke against making a statewide policy on the use of body worn cameras.

Mr. Chad Jenson, Sheriff, Cache County, stated that body worn cameras have recently been implemented in Cache County, with policies consistent with the policies of the Utah Highway Patrol.

Mr. Mark Gower, Sheriff, Iron County, spoke against changing "should" to "shall" in a blanket policy for all state law enforcement agencies. Sheriff Gower stated that as a matter of respect for privacy it is not always appropriate to turn on a camera.

Ms. Marina Lowe, Legislative and Policy Counsel, American Civil Liberties Union of Utah (ACLU), stated that the position of the ACLU is that with good public policy the use of body cameras will promote police accountability, deter officer and civilian misconduct, and provide objective evidence to help resolve civilian complaints without significantly infringing on privacy. Ms. Lowe stated that the ACLU supports minimum policy guidelines and standards across the state and supports limiting police discretion so that footage is obtained for every encounter between a police officer and civilian.

Mr. Josh Daniels, Policy Analyst, Libertas Institute, recommended statewide policies for issues that are of interest to the public, including a consistent deletion schedule for footage that does not have an immediate interest for law enforcement, and disclosure and access to footage.

5. Police Use of Force: Options for Future Committee Action

Committee staff distributed "Proposed Outline: Referring to Police Use of Force Issues to the Law Enforcement and Criminal Justice Interim Committee."

Due to lack of a quorum no action was taken on this item.

6. Committee Business

Future meetings were schedule for Monday, August 17, 2015, at 9:00 a.m. and Wednesday, September 9, 2015, at 9:00 a.m.

7. Adjourn

Chair Stephenson adjourned the meeting at 12:45 p.m.